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Hil, Richard and Robertson, Robert Lyle (2003) *What sort of future for critical criminology*. *Crime, Law & Social Change*, 39(1). pp. 91-115.

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Mental Health and Human Rights Implications for Unaccompanied Minors Seeking Asylum in Australia

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1 Introduction

Research indicates that unaccompanied children seeking asylum are in an especially vulnerable position. Because of this there are several international agreements and statements directed towards securing their rights and protection. In addition, medical research has pointed to the long-term detrimental effects if such standards for their treatment are not followed. This article discusses how the very fact of refugee detention is causing and exacerbating mental illness in unaccompanied refugee children which in turn is a breach of Australia's international human rights obligations.

What is meant by an Unaccompanied or Separated Minor Refugee? It seems to be generally accepted that 18 should be taken as the age of majority so anyone under this age should be treated as a minor. The United Nations Convention on the Rights of the Child (CROC) defines as children all human beings under the age of 18, unless the relevant national laws recognize an earlier age of majority.¹

Whether or not a child is unaccompanied is a separate issue. Children separated from their families and who are totally alone, are generally referred to as "unaccompanied children" or unaccompanied minors (UAM'S)². Therefore researchers define an unaccompanied refugee/asylum seeking minor as an individual under 18 years of age who has been separated from both parents and who is not being cared for by an adult who has a responsibility to do so.³

In emergency situations, however, relatively few children are found to be totally alone and therefore truly unaccompanied. They will have been separated from their parents or usual caregivers however they may be living with, or accompanied by, extended family members, friends, neighbours, or other adults. Consequently the United Nations High Commission for Refugees (UNHCR) defines a second term "Separated Children" as children under 18 years of age who are separated from both parents or from their previous legal or customary caregiver. This term encompasses the extended group and also includes unaccompanied children.⁴ For the purposes of this article the reference to unaccompanied minors is to children separated from both parents or from their previous customary caregivers, in other words, children who are truly alone.

2 Background position regarding the detention of children in Australia

In order to detain refugee children the Australian government relies mainly on the legislative provisions of the *Migration Act 1958* (The Migration Act). The Migration Act allows the Government to regulate, in the national interest, the coming into and presence in Australia of non-citizens.⁵ The term "non-citizens" is a reference to people who are not Australian citizens.⁶

Section 189 of the Migration Act sets out the powers and obligations imposed on the Federal Government to detain non-citizens. It has required, since 1994, that all non-citizens who are unlawfully in Australia must be detained. The detention requirement continues until the person is determined to have a lawful reason to remain in Australia (and is granted a visa) or is removed from Australia. These provisions apply to all unlawful non-citizens regardless of their age, so in effect, all refugee children without valid visas must be detained until they are either granted a visa or deported.⁷ These children may be detained in detention centres, prisons, watch houses and so on.⁸ They may also be removed to or detained on an offshore processing facility at Nauru, Papua New Guinea or Christmas Island. There was a recent challenge to the constitutional validity of the detention provisions in the Migration Act specifically with respect to children but this challenge was unanimously rejected by the High Court.⁹

Immigration Detention Centres have been established in Sydney (Villawood), Melbourne (Maribyrnong), Perth, near Port Augusta in South Australia (Baxter) and the more remote sites of Woomera (closed in 2003), Port Hedland and Curtin (closed in 2002). These last three are desert camps in isolated areas. All these centres are administered by Group 4 Falck Global Solutions Pty Ltd, who took over from Australasian Correctional Management Pty Ltd in February 2004. These organisations are responsible for the day to day operational management of detention facilities and services delivery, including health, catering, education, welfare and security and are supposedly working under the Immigration Detention Standards (IDS) that govern the conditions required to be observed by the Service Provider.¹⁰ The Minister may also approve an alternative location as a place of immigration detention as provided by s5 of the Migration Act. An example of this is the Residential Housing Project for women and children in the Woomera township. The Government has also established immigration reception centres on Christmas Island and detention centres on the remote islands of Nauru and Manus.

The effect of these legislative provisions is that refugee children are to come extent deprived of their liberty. It is of great concern that the length of time they will be detained is variable, being subject to the administrative time constraints that apply to persons who make applications for visas. There have also been constant amendments to the Migration Act in the last few years. These amendments have attempted to limit the avenues of appeal against negative decisions¹¹, the most recent introducing sanctions for sponsors where the conditions of the sponsorship or associated visas are breached.¹²

2.1 Unaccompanied Children as Ward's of the State

In addition, under the *Immigration (Guardianship of Children) Act 1946* (Cth) (the IGOC Act), originally enacted to cover the many British children coming to Australia during World War II, an unaccompanied minor becomes the ward of the Minister for Immigration and Multicultural and Indigenous Affairs who, in the absence of any statutory guidance, would need to administer this role using common law principles.¹³ The Federal Court has found that the duty of the guardian under the IGOC Act is to ensure that all children under the guardian's care enjoy the fundamental human rights enshrined in the CROC, and in particular that the guardian must act at all times in the best interests of the child. The guardian must ensure that the child under care is

properly fed, clothed, housed and educated.¹⁴ According to sections 4 and 6 of the IGO Act, “The Minister has the same rights, powers, duties and obligations and liabilities as a natural guardian of the child would have”. There is provision for the Minister to delegate the guardianship role, and the IGO Act allows for the continuing operation of state and territory laws relating to child welfare. There would appear to be potential for a conflict of interest in this situation.¹⁵ The Minister, as other commentators have noted, would seem to be both ‘guardian and jailer’.¹⁶ This was recognised in the 2004 Report of the Australian Human Rights and Equal Opportunity Commission (HREOC) titled “A Last Resort?: National Inquiry into Children in Immigration Detention” which states that “the legislation providing that the Minister be the guardian of children and the delegation of those powers to department managers created an insurmountable conflict of interest”.¹⁷ The Courts have also recognised this dilemma in *Odhiambo v Minister for Immigration and Multicultural Affairs*¹⁸ where it was stated “the potential for conflict of roles must exist”.

The Minister's role as guardian has been considered in several recent Federal Court cases.¹⁹ In the *Jaffari* case,²⁰ it was questioned whether the Director of the Department of Community Development Western Australia had performed the delegated duties of the Minister according to the terms of the international obligations ‘to which this country is a party’.²¹ Although the application was unsuccessful, some strong statements were made by Justice French in regard to the operation of the legislation in relation to unaccompanied minor refugees, where he noted that: ‘there appears to be a significant discrepancy between the guidelines published by the United Nations High Commissioner on refugees in respect of unaccompanied minors seeking asylum and the current administration of the Migration Act in relation to such persons’.²²

The 2004 HREOC Report also found that the staff responsible for running the detention centres were the people who ultimately became responsible for unaccompanied children in detention despite no documentation supporting the delegation of guardianship from the Minister or his delegates²³ to the staff.²⁴ The Report states that the staff had developed a range of strategies over time to improve the care available for unaccompanied children, such as case management plans, progress reports and regular meetings to discuss their needs. Despite these systems being in place HREOC considered that it was not adequate to “address the problems and serious distress faced by these children”.²⁵ Recommendation 3 of the major recommendations and findings of the Report states “An independent guardian should be appointed for unaccompanied children and they should receive appropriate support.”²⁶

UNICEF has recommended that, “an independent and formally accredited organisation appoints a guardian or adviser as soon as the unaccompanied child is identified. The guardian /adviser would be charged with ensuring that the best interests of the child are respected throughout the status determination procedure and in all care and welfare decisions concerning the child.”²⁷

It should also be noted that the Department of Immigration Multicultural and Indigenous Affairs policy (DIMIA) as set out in its Procedures Advice Manual 3 (para 4.6.2) takes the position that the IGO Act does not apply while the minor is held in

immigration detention, and that the Minister does not accept responsibility for guardianship of minors in detention centres.²⁸

3 International obligations regarding unaccompanied children

The major international obligations regarding children are set out in the United Nations Convention on the Rights of the Child (the CROC). The paramount obligation under the Convention is that States act in children's "best interests". This is set out in Article 3(1) of CROC which provides:

1. *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*
2. *States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being...*

The Convention was adopted by the United Nations General Assembly in 1989, and signed by Australia in August 1990.

3.1 The right to seek and enjoy asylum

All people including children have a universally recognised right to seek and enjoy asylum and States are requested to cooperate with the UNHCR in the performance of its function of providing protection to refugees.

Apart from the CROC, Australia's international obligations in relation to child asylum seekers are found in various instruments including:

- The Convention relating to the Status of Refugees, 1951
- The Protocol relating to the Status of Refugees, 1967

and other UN documents including:

- The Resolution of the General Assembly of the United Nations 428(V) adopting the Statute of the Office of the United Nations High Commission for Refugees 1950;
- UNHCR Guidelines "Refugee Children-Guidelines on Protection and Care", 1994 (UNHCR Guidelines);
- UNHCR Note on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, 1996 (UNHCR Note);
- The U.N. Rules for Juveniles Deprived of their Liberty 1990 (UN Rules); and
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985.

Australia, as a signatory to the 1951 Convention and 1967 Protocol relating to the Status of Refugees, has accepted its obligations in relation to the protection of refugees and asylum seekers.

3.2 Detention of children is a last resort

Article 37(b) of the CROC specifically states that children should not be deprived of their liberty unlawfully or arbitrarily, with detention only in conformity with the law, *as a measure of last resort* (authors' emphasis) and for the shortest appropriate period of time. As was noted in the HREOC report this requirement goes further than the general prohibition on arbitrary or unlawful detention as set out in article 9(1) *International Convention for Civil and Political Rights* requiring detention of children to be as a measure of last resort and for the shortest possible time.²⁹

Both the UNHCR Note on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum and the UNHCR Guidelines on Refugee Children make recommendations about children asylum seekers. The UNHCR Guidelines state:

7.6 *Children seeking asylum should not be kept in detention. This is particularly important in the case of unaccompanied children.*

7.7 *States which, regrettably and contrary to the preceding recommendation, may keep children seeking asylum in detention, should, in any event, observe Article 37 of the Convention of the Rights of the Child, according to which detention shall be used only as a measure of last resort and for the shortest appropriate period of time..*

The particular vulnerability of unaccompanied children is therefore recognised in guideline 7.6 and guideline 7.7 highlights the principle that detention of children asylum seekers should only be used as a last resort and for as short a period as possible.

Under article 20 of CROC there are also special obligations on Australia with respect to those children who are without parental support to receive additional support and care to ensure they are guaranteed the rights set out in CROC. This article states,

1. A child temporarily or permanently deprived of his or her family environment or in whose own best interest cannot be allowed to remain in such an environment, shall be entitled to special protection and assistance provided by the State.
2. State Parties shall in accordance with their national laws ensure alternative care for such a child
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's religious, cultural and linguistic background

Under article 37 of the CROC, Australia also has an obligation to ensure that "no child is subjected to torture or other cruel inhuman or degrading treatment", it must also ensure that all children in detention are treated with humanity and respect and in a manner which takes into account their age, that they have a right to prompt legal and other assistance and the right to challenge the legality of their detention.

3.3 Conditions of detention

The CROC provides generally that children asylum seekers are to receive "appropriate protection and humanitarian assistance" in the enjoyment of their rights. Where a child is unaccompanied by family members they are to be "accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason".

The UN Rules for the Protection of Juveniles Deprived of their Liberty also state that children deprived of their liberty shall have the right to services and facilities that meet all their requirements of health and human dignity.

Various UNHCR documents interpret and discuss the above requirements and provide guidelines in relation to the detention of children asylum seekers. The guidelines indicate that:

- child asylum seekers should not be detained in prison-like conditions;
- every effort needs to be undertaken so that children are released from detention;
- there needs to be a guarantee of meaningful activity and programs thereby promoting the health and development of the young person;
- they have a right to education, medical treatment, exercise and recreational facilities;
- they are to be housed separately from unrelated adults; and
- they are to have a reasonable amount of personal privacy.³⁰

The particular vulnerability of unaccompanied minors is recognised with the additional recommendation that regular assessments of such children be made by the appropriate social welfare authorities.

This vulnerability was also recognised in the recent Federal Court decision of *B and Another v Minister for Immigration, Multicultural and Indigenous Affairs*³¹ where the majority found in favour of releasing the children in this case from detention. In their reasons they cited evidence given in a report into the psychological impact of detention on the children and stated that the "continued detention of these children in these circumstances is causing them significant and permanent psychological damage." The judgement cited the following paragraph of the health report of the children:

"The impact of the experience to which children have been subjected within the Woomera Detention Centre have been superimposed on previous trauma. Within a child protection framework these experiences can be described as psychological maltreatment defined by Hart, Brassard and Karison as 'behaviours that convey to the child that he/she is worthless, flawed, unloved, endangered or only valuable in meeting someone else's need'. Psychological maltreatment alone, that is without the components of sexual or physical abuse can be the most powerful influence and best predictor of the development outcomes of other forms of child abuse and neglect.

Against the six major forms of psychological maltreatment the children demonstrate the effects of such abuse and neglect in terms of undermined attachment relationships with their parents, disrupted peer relationships, unhappiness and depression and an undermining in their ability to achieve their developmental milestones to mention a few”.³²

The majority recognised the extreme mental impact that detention was having on these children and invoked the court’s supervisory child welfare protection power under the *Family Law Act* to release them. The High Court in *Minister for Immigration and Indigenous and Multicultural Affairs v B*³³ overturned this decision on the basis that the Federal had acted beyond power and the specific provisions of the Migration Act overrode the general provisions in the *Family Law Act* 1975.

4 Mental health research on unaccompanied children

A significant number of researchers have consistently found that unaccompanied children are at greater risk of psychiatric and mental health problems than their accompanied peers.³⁴ A 1998 study by Sourander examining symptoms of 46 unaccompanied refugee minors in an asylum centre in Finland, concluded that unaccompanied children and adolescents are highly vulnerable to emotional and behavioural issues and that this was exacerbated by the stress of asylum-seeking which involves factors such as deprivation of liberty and uncertainty about the future.³⁵

A 1995 study by McKelvey and Webb also came to this conclusion in its findings that psychological issues present prior to forced migration were increased in unaccompanied minors during stays in a processing centre in the Philippines.³⁶ Thomas and Lau conclude after a review of the literature over the past ten years that unaccompanied or separated children and adolescents present a higher psychological risk than other asylum seekers with the same pre-migration exposure to trauma.³⁷

Although the research into the mental health of unaccompanied minors covers many areas for the purpose of this article the discussion will focus on the impact of two situations on unaccompanied minors: the fact of detention and the process of asylum seeking.

4.1 Detention

Ajdukovic and Ajdukovic compared two groups of children who were uprooted and displaced together with their families into two different housing situations: the first group were placed with host families and the second, lived in communal shelters.³⁸ Parental reports indicated that the children in host families showed lower rates of stress related signs than those living in sheltered environments. Forty-three percent of those in homes showed no signs of abnormal functioning while 24% in shelters showed no signs. During displacement, the number of stress related symptoms in host family children decreased by 25%, but symptoms decreased in only 10% of children in shelters. Among those in the collective shelter, 20% still showed aggression and 28% still showed despondent emotions. Stress related symptoms of children in host families actually decreased with a significant number no longer experiencing nightmares, fearfulness, and despondency or exhibiting unsociable behaviour.

The researchers attributed their findings to the unfavourable living conditions in shelters where families are generally larger with decreased socio-economic status and where displacement duration is longer or takes place in occupied territory. They concluded that there is a considerable range of stress reaction in displaced children with a higher incidence of stress associated with mothers' poor ability to cope with the stresses of displacement. Although these children were with family members the research indicates that the very fact of detention added to their emotional and psychological distress. In the even more emotionally traumatised and vulnerable unaccompanied child, who have experienced even more losses, the effect will be even more pronounced.

An earlier study of 600 Vietnamese children living in a refugee centre in Hong Kong found anxiety and depression in a majority of children surveyed, with pronounced effects among those children unaccompanied.³⁹

These findings and others corroborate that children and adolescents living in shelters, camps and processing centres are subjected to increased risk for psychological dysfunction.⁴⁰ The problem is compounded by the additional stress for unaccompanied children of being supervised by and often facing communal living with adults outside their family and/or cultural group.

The institutionalisation of children increases their risk of mental health problems.⁴¹ The 2004 HREOC Report shows there is evidence from current and former detainee children and their parents, former ACM medical staff, department management reports, state child protection agencies, independent mental health experts, torture and trauma services and community groups involved with current and former detainees all confirming the detrimental impact that long term detention of children has on their mental health.⁴²

The distress that detention causes to children, especially unaccompanied children was well documented in the 2004 HREOC Report "A Last Resort"⁴³ which highlights one occasion where 11 unaccompanied children detained at Woomera attempted self harm after their detainers moved them to a more child appropriate compound. The children were unhappy about the move and so on the same day inflicted razor cuts to their arms and chest. The unaccompanied children were aged between 12 and 17. HREOC stated that it was clear these children were in a state of distress but the children were still kept in detention. The fact that they were still in detention obviously facilitated a much more serious incident of attempted self harm by unaccompanied children in January 2002. A group of unaccompanied children entered a suicide pact in order to convince the Government to release them from detention. After this 5 unaccompanied children were released from detention but there were ongoing acts of self harm by other unaccompanied children. The HREOC Report details these incidents which include a 12 year old unaccompanied child participating in a hunger strike and sewing his lips together, another 14 year old child throwing himself against a wall, threatening to kill himself, going on a hunger strike and ingesting shampoo and there are numerous other similar incidents.⁴⁴

The psychological harm these children are subjected to through their arbitrary detention is illustrated by these cases. The children are clearly reacting to their “imprisonment”.

Unaccompanied children are also particularly vulnerable to the actions of other adults in the detention compounds. They see the other adults committing acts of self harm in order to try and end their detention and the children mimic their actions.⁴⁵

These incidents prompted the Department to release many unaccompanied children into community detention.

4.2 The Process of Asylum Seeking

Researchers indicate that the process of sought asylum increases psychological risk to unaccompanied children who have already suffered significant psychological trauma. A study by McKelvey and Webb found that high rates of psychopathology prior to forced migration were significantly exacerbated during their stay.⁴⁶ In a later study, Sourander interviewed 46 unaccompanied refugee minors awaiting placement in an asylum centre in Finland.⁴⁷ These children had experienced a number of losses, separations and threats and most exhibited symptoms of post traumatic stress disorder (PTSD), depression and anxiety. Many of the children complained of feelings of uncertainty about the future and suicidal thoughts. Sourander concluded that unaccompanied children are highly vulnerable towards emotional and behavioural symptoms and that this is exacerbated by the stress involved in asylum-seeking.⁴⁸ A study of adult asylum seekers found that the salient aspect of the asylum seeking process possibly compounded the stressors suffered by an already traumatised group.⁴⁹

Again this is clearly evidenced in the 2004 HREOC Report where it stated that the process of Asylum seeking is extremely stressful and impacts seriously on the mental health of children. The length of detention, uncertainty and negative visa outcomes are all part of the process of asylum seeking and impact adversely on all detainees.⁵⁰ The Victorian Foundation for the Survivors of Torture have reported “Children who were in detention for longer periods had significantly higher scores on the stress assessment schedule as the effect of length of stay appears to result predominantly from increased exposure to traumatic events within detention centres.”⁵¹

The Department of Immigration, Multicultural and Indigenous Affairs even recognises that “mental health issues are to do with being long term in the detention environment”.⁵²

The HREOC Report confirmed that children in detention are likely to suffer from developmental problems⁵³, depression and post traumatic stress disorder⁵⁴ and suicidal thoughts and acts of self harm.⁵⁵

Again unaccompanied children are particularly vulnerable because they don’t have the same familial support as accompanied children. This was recognised by one Doctor, who worked at Woomera, and stated to the 2004 HREOC inquiry:

“I can only say that the longer they spent, the worse the effects that I saw. And that was in some way dependant on the age and the support, *whether they were an unaccompanied minor* or whether they simply still had the support of their parents or even one parent.”⁵⁶

A 2001 psychological report about detainees from Villawood also noted the mental decline of detainees matched the visa process combined with the length of detention.⁵⁷

5 Statistics on Unaccompanied Children in Australian Detention

It is difficult to obtain accurate figures on UAMs in Australian detention centres and similar facilities as DIMIA does not publish these figures regularly.

As at 12 April 2002 there were 21 unaccompanied children in Australian detention centres and similar facilities. Nine of these children were between 11 and 15 years and the remaining 12 were 16-17 years of age.⁵⁸ A further 12 UAMs were in alternative foster care arrangements at this date.⁵⁹ The unaccompanied children were predominantly male and aged 16-17.⁶⁰

According to statistics (based on information provided by DIMIA) released by A Just Australia in December 2003 these numbers fell in 2003.⁶¹ At this time there were, according to these figures, a total of 10 unaccompanied children in detention made up of 2 children held at Villawood, 3 on Christmas Island and 5 on Nauru. The unaccompanied children on Nauru have been subject to indefinite detention along with the other children. A note attached to these figures states:

The department reports a further 114 people are detained in 'other facilities' - either prison lockups, hospitals or foster care. It is understood that many of these are children, but the Department recently stopped releasing statistics on these and has refused to advise how many of these are children.

Statistics released as at 1 January 2004 by the Refugee Council Australia, which provides details of adults and minors held in detention, state that no unaccompanied children were held at the Port Hedland and Woomera Residential Housing Projects (RHPs) and also indicate that figures were unavailable for Baxter, Port Hedland, Christmas Island Immigration Reception and Processing Centres (IRPCs), Nauru Offshore Processing Centre, Port Augusta RHP and Perth, Maribyrnong and Villawood Immigration Detention Centres (IDCs).⁶²

The following table provides a snapshot of the numbers of unaccompanied children in detention from 1999-2003.

Table 11: Biannual snapshot of numbers of unaccompanied children in detention: 1999-2003

Date	Unaccompanied children detained	Total children detained
1 Jan 1999	1	59

1 July 1999	2	58
1 Jan 2000	41	399
1 July 2000	49	542
1 Jan 2001	37	287
1 July 2001	121	631
1 Jan 2002	40	543
1 July 2002	12	138
1 Jan 2003	8	132
1 July 2003	8	111

Source: DIMIA, Letter to Inquiry, 30 May 2003, Attachment; DIMIA Response to Second Draft Report, 27 January 2004.

DIMIA also reports on the length of time in detention for children as at 12 April 2002 as follows (There were no figures available specifically for unaccompanied children):⁶³

Length of time in detention (months)	Number of children
0-3	13
3-6	10
6-9	42
9-12	36
12-19	55
18 + months	28
Total	184

On 17 February 2003, Immigration Minister Philip Ruddock was reported as saying that the average time children had spent in detention centres was one year, three months and 17 days. The longest period reported so far was a child born to a Chinese national in detention who was incarcerated for the first five years, five months and 20 days of his life.⁶⁴

The following statistics were provided by DIMIA to HREOC in 2003 and 2004 and provide details of the number of UAMs applying for protection visas and those found to be refugees:

Table 9: Unaccompanied vs accompanied unauthorised arrival children who applied for a protection visa: 1999-2002

Year	Unaccompanied children	Accompanied children
1999-2000	64	617
2000-2001	170	844
2001-2002	51	451

Source: DIMIA, Letter to HREOC Inquiry, 30 May 2003, Attachment.

Table 10: Unaccompanied detainee children found to be refugees

Year of application	Percentage of unaccompanied children in detention found to be refugees
1999-2000	96.7% (59 out of 61)
2000-2001	89.9% (124 out of 138)
2001-2002	89.8% (88 out of 98)
2002-2003	(0 out of 0)

Source: DIMIA, Response to Second Draft HREOC Report, 30 January 2004.

Of the unaccompanied children arriving without a valid visa in Australia between 1 January 1999 and 30 June 2002 54.5% were 16 to 17-years-old, with 39 per cent in the 13 to 15-year-old age bracket and 6.5 per cent aged under 13⁶⁵

The vast majority (86.7 per cent) of unaccompanied children came from Afghanistan. The remainder were Iraqi (10.5 per cent) and Iranian (1 per cent). There was one unaccompanied child from each of the following countries: Pakistan, Palestine, Sri Lanka, Syria and Turkey. There were only four girls (two Iraqi and two Afghan)⁶⁶

In September 2004 DIMIA advised that there were 6 unaccompanied children in detention, one Ghanaian boy in Villawood and five Afghani boys in home detention in Adelaide. These statistics do not however include those children in the islands of Manus or Nauru.⁶⁷

As at 5 January 2005 the community group, Children Out of Detention (ChilOut) Report that there are at least 90 children held in detention centres and an unknown number of these are UAMs.⁶⁸

6 Reports on the Mental Health of Unaccompanied Refugee Children in Australian Immigration Detention Centres

According to submissions made to the 2004 National Inquiry into Children in Immigration Detention 'access by mental health professionals to Australia's immigration centres is extremely limited' and 'offers from the Faculty of Child and Adolescent Psychiatry and the Committee of Presidents of the Combined Medical Colleges to assess need and provide mental health services, have met with inconclusive responses from DIMIA.'⁶⁹

Former employees at the IDCs and IRCPs have spoken out about the adverse conditions existing at these facilities. Harold Bilboe, a psychologist formerly employed by ACM at Woomera and Curtin IRCPs, in a statement made to the Human Rights and Equal Opportunity Commission's inquiry into children in immigration detention, made the point that no proper 'policies, procedures or guidelines' for the provision of psychological services were available at these centres. He was seriously concerned by fact that at the time he left the services of ACM 'self-harm was almost universal amongst unaccompanied minors'.⁷⁰

In the 2004 HREOC Report it is clear from the expressions of the children themselves that they faced much mental anguish in the circumstances of detention. They had such feelings of hopelessness that it led them to take such drastic actions as mass suicide attempts.⁷¹

One of the major findings of the 2004 HREOC Report was that:

“Children in Immigration detention for long periods of time are at high risk of serious mental harm. The Commonwealth’s failure to implement the repeated recommendations by mental health professionals that certain children be removed from the detention environment with their parents amounted to cruel, inhumane and degrading treatment of those children in detention.”⁷²

A further major finding of HREOC was that “at various times between 1999 and 2002, children in immigration detention were not in the position to fully enjoy certain rights. This included the right of unaccompanied children to receive special protection and assistance to ensure the enjoyment of all rights under the CROC.”⁷³

A further difficulty, as highlighted by Suicide Prevention Australia in its submission to the 2004 National Inquiry is that doctors involved in the preparation of medico-legal reports visiting the IDC's between October 2001 and April 2002 were not given permission 'to interview unaccompanied children, or to sit in on the interviews conducted by the lawyers representing these children.'⁷⁴

There is limited psychological research relating directly to the unique impact of mandatory detention on children in Australia. However, there are two important sources of knowledge which can inform this discussion of its impact: conceptual

models of trauma and empirical studies of the impact of trauma. These conceptual models and empirical studies of trauma guide assessment and prediction of the consequences on their future mental health of the current policies and practices relating to child asylum seekers.⁷⁵

6.1 Conceptual Models of Trauma

The following is a brief overview of a model for trauma which provides a framework for understanding the impact of mandatory detention upon the psychological wellbeing of children in detention.

Silove, whose research is highly regarded in Australia, proposed a model for conceptualising trauma and its impact upon individuals and communities.⁷⁶ The model is based upon the notion that human reactions to trauma are governed by the drive toward survival and psychosocial development.

Silove's model is based on five hypothetical constructs for conceptualising trauma and response to trauma: safety; attachment; identity and role; justice; and existential meaning.⁷⁷ Two aspects of his model, the safety system and the attachment-bonding system, are particularly relevant when considering the impact of detention on the mental health of child asylum seekers.

When considering the issue of safety of unaccompanied asylum seeking children it seems clear that the very nature of their experience of detention undermines their sense of safety and may contribute to a sense of ongoing danger, thus detracting from their recuperative capacities. Detention centres are often hostile environments both physically and emotionally. Australian detention centres are generally located in isolated and harsh environments. Furthermore, an unaccompanied child is more vulnerable to threats of violence and abuse from adult detainees and with no close adults to protect them and act as an emotional buffer they are more susceptible to being affected by the distress and unhappiness surrounding them.

Bowlby postulated that the attachment-bonding system is the result of a drive to form attachments and that the drive to maintain interpersonal bonds is phylogenetically determined.⁷⁸ Silove has suggested that the separations and losses experienced by refugees are multiple in nature, and include both actual and symbolic losses. The very process of detaining an unaccompanied child asylum seeker, in particular, disrupts the child's interpersonal bonds with potential long term carers in the community. The experience of incarceration is arguably a very significant 'breach of trust' resulting in the loss of a sense of belonging, and undermining future opportunities for social cohesion within the broader community.

A number of researchers support the importance of attachment in positive human development and the potential long-term consequences of ruptures to bonds in effecting adult mental health. The situation is exacerbated in asylum seekers in terms of the grief resulting from the losses incurred by the young person, including the loss of culture or "cultural bereavement".⁷⁹ This loss is heightened by the fact of detention away from their cultural group.

6.2 Research relevant to Australian Detention Centres

The above overview provides a framework for understanding the impact of mandatory detention upon the psychological wellbeing of detained children however there is little direct evidence on the impact of Australian detention centre experiences on adults or children. What can be discussed is the relevance of other studies of unaccompanied minor refugees in similar situations and some Australian case studies that have now been documented.

The Sourander study⁸⁰ discussed above reported that the refugee children experienced a number of losses, separations, persecution and threats, which were not dissimilar to the experience of children who are arriving in Australia. He also reported that approximately 50% of the sample was functioning in the clinical or borderline range while younger children (under 15 years of age) evidenced more severe psychiatric problems. Ajdukovic and Ajdukovic⁸¹ also support the view that detention is harmful to a child's mental health. Their study reported that children placed in a collective shelter had a higher risk of mental unwellness than children placed with host families. Stress related reactions, including sleeping and eating disorders, separation fears, and withdrawal and aggression, were evident among the displaced children. Significantly, children exhibited a significantly higher incidence of stress reactions if their mothers had difficulty coping with the stress of displacement. What then for the children who have no mother?

Although no large scale studies have been undertaken on the long term mental health issues for unaccompanied refugee children in Australian detention centres a 1998 HREOC study, titled "Those Who've come across the Seas: The Report of the Commission's Inquiry into the Detention of unauthorised Arrivals" which considered that detention of refugees in Australia supports the view that long term detention was increasing the risk of mental distress.⁸² There were various factors relevant to this but one of those was that "...the indeterminacy of detention makes the fact of detention considerably more difficult to endure".⁸³ The Report makes the point that at least criminal offenders have a defined period of detention which provides them with certainty and assists them to pace themselves through the period of their sentence. Asylum seekers face not only the fact of detention but that there is not an end date to their incarceration. "They have no idea when, or even if, they will be released".⁸⁴ The Report refers to a case study involving two unaccompanied brothers who were aged 16 and 18 when they arrived in Australia. Their prolonged period of detention (5 years) and the uncertainty of their future whilst in detention led to a serious impact on their mental health.⁸⁵

A Review of Reports on the Treatment of Children in Australian Detention Centres conducted by Children Out of Detention (ChilOut) in 2002 also refers specifically to the issue of unaccompanied children and notes that unaccompanied minors in detention are particularly vulnerable. This Report suggests that 'they are detained under conditions which expose them to harmful influences'. It notes nineteen documents which allege that harm is being done to unaccompanied minors by being placed in detention centres.⁸⁶ One example given was that of a 16 year old unaccompanied boy from Afghanistan. Because of the traumas and losses he had already suffered (including the death of both parents) he was profoundly depressed and suicidal and had developed a stutter. The mental health worker involved reported that because of this he did not fit in with the other children in the centre. Another

example outlined the distress suffered by a young unaccompanied girl who ‘would get dressed, dress her little brother’ and then ‘would sit outside waiting for immigration officials to come and interview them so they would be released. No one ever came.’ Of most concern is the lack of information given to these children and also that no adult seems to have been given the role of caregiver for these children.⁸⁷

Support for the contention that the Australian system of compulsory detention is causing or exacerbating high levels of mental ill health can also be found in many of the case studies detailed in submissions to the 2004 HREOC National Inquiry into Children in Immigration Detention.⁸⁸

7 Suicide as a Gauge of Children’s Mental Distress

The rate of suicide and self-injury among minors is the most telling gauge of mental distress in this group. The following table outlines figures taken from ‘Two Australian national policies on self-injury and suicide: a submission to the human rights commission on children in detention’ which was compiled by Michael Dudley, Conjoint Senior Lecturer, School of Psychiatry, University of New South Wales and Sydney Children’s Hospital, and Chair, Suicide Prevention Australia.⁸⁹ The study is important in terms of the numbers involved as against the population, the serious methods of self harm used, and the young ages of the children, including unaccompanied children, involved in such behaviour.

EXAMPLES OF MEDICALLY SERIOUS SUICIDE ATTEMPTS BY CHILDREN AND YOUTH IN IDC’S –

sex	age	when	Method	IDC	Country	Story reported [source]
M	17	06/01/01	Throat-slashing	2	Iraqi	Occurred when ACM refused to let his father attend a dentist without handcuffs [Age, 8/01/01, Illawarra Mercury 09/01/01]
M	15	March 2001	Hanging	5	Iraqi	Major depression, conflict with ACM guards, hospitalised in Perth [PK, SMH 29/05/01]
		Prior to 29/01/02	Hunger-strike			11 unaccompanied children, demanding to be released into foster care [SMH, 29/01/02]
M	14	07/02/02	Lip-sewing, forearm-slashing	3	?	Occurred during recent Woomera hunger strike [SMH 07/02/02]
M	?		Hanging	3	?	Occurred during recent Woomera hunger strike [SMH 07/02/02]
M	13	Early April	Drank shampoo	3	Iranian	Unaccompanied minor, previously ‘compliant’ [PC]
M	12 12	Early April	Hanging	3	Both Afghani	Suicide pact? [PC]
M	13	Early April	Hanging	3	Iranian	[PC]
M	18		Hanging (multiple attempts) & cutting	1	Afghani	PTSD and psychotic depression [SMH 17/04/02]
F	10	8/04/02	Hanging	2	Iranian	PTSD and severe depression. Successful hanging narrowly averted by sister alerting parents [PK]. Hospitalised.

IDC code. 1 = Villawood, 2 = Maribyrnong, 3 = Woomera, 4 = Curtin, 5 = Port Hedland

PC = personal communication [Ms Lyn Bender]

PK = author’s personal knowledge of case

PTSD = post-traumatic stress disorder

A report prepared for the Office of the High Commissioner for Human Rights, recording excess rates of suicide, suicide attempts and self-harm in IDC’s in the 18 months prior to the report ‘suggests that suicide rates may be at least 10 times in

excess of the general Australian rate, and 3 times that of young adult men, the age and sex group at highest risk.⁹⁰

The 2004 HREOC Report also talks about the prevalence of acts of self harm by children in detention centres and details the high level of self harm which occurred at the Woomera detention centre in 2002.⁹¹ Suicide threats and acts of self harm of unaccompanied minors led to the Department making a policy in 2002 to transfer these children into home based community foster care⁹² however there are still unaccompanied children in some form of detention both in Australia and on the islands of Manus and Nauru.⁹³

8 Conclusion

Australia has clear international obligations to ensure that it acts in the best interests of refugee children. It is a signatory to several international agreements that seek to protect and provide guidance for the rights of child asylum seekers. Central to these agreements is that Australia has an obligation to act in the best interests of these children. More specifically, particularly in the context of the mandatory detention of refugees in Australia, our Government also has an obligation to use detention of children only as a last resort. Clearly the Government is not doing this and is using detention as its first option, and not where all other options have failed.

Although there have been no systematic studies of unaccompanied minor refugees in Australia the existing mental health research which looks at both a model for conceptualising trauma and empirical studies of unaccompanied minor refugees in other detention centres points to strong evidence of the high risk to long term mental health for these children. The very fact of detention, with the consequent deprivation of liberty, having no caregiver in the same family or cultural group, and in addition, the process of asylum seeking with its indeterminacy, is exacerbating the trauma and mental ill-health of already damaged and vulnerable children.

This argument is now strongly supported by the findings of the 2004 Australian National Inquiry into Children in Immigration Detention. This Inquiry concluded that the process of asylum seeking is extremely stressful and has a major negative impact on the mental health of refugee children. The Inquiry also found that the length of detention and the uncertainty of detention were important contributors to the mental ill health of all detainees. The research, outlined in this article, points to the fact that UAMs are the most vulnerable of refugee groups and yet they are being treated in the same manner as all refugees, with particularly disastrous results for their mental health.

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